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APPENDIX

IN THE

Supreme Court Of The United States

October Term, 1978

No. 78-1078

WORLD-WIDE VOLKSWAGEN CORPORATION and SEAWAY VOLKSWAGEN, INC.,
Petitioners,

V.

THE HONORABLE CHARLES S. WOODSON, District Judge of Creek County, State of Oklahoma, KAY ELOISE ROBINSON, EVA MAY ROBINSON, a minor, by and through her father and next friend, Harry Robinson, GEORGE SAMUEL ROBINSON, a minor, by and through his father and next friend, Harry Robinson, and HARRY ROBINSON, individually,
Respondents.

ON WRIT OF CERTIORARI TO THE
SUPREME COURT OF THE STATE OF OKLAHOMA

PETITION FOR CERTIORARI FILED JANUARY 5, 1979
CERTIORARI GRANTED FEBRUARY 21, 1979

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1978

No. 78-1078

WORLD-WIDE VOLKSWAGEN CORPORATION
and SEAWAY VOLKSWAGEN, INC.,
Petitioners,

V.

THE HONORABLE CHARLES S. WOODSON,
District Judge of Creek County, State of Oklahoma,
KAY ELOISE ROBINSON, EVA MAY ROBINSON,
a minor, by and through her father and next friend,
Harry Robinson, GEORGE SAMUEL ROBINSON,
a minor, by and through his father and next friend,
Harry Robinson, and HARRY ROBINSON, individually,
Respondents.

ON WRIT OF CERTIORARI TO THE
SUPREME COURT OF THE STATE OF OKLAHOMA

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IN THE DISTRICT COURT
IN AND FOR CREEK COUNTY
STATE OF OKLAHOMA

No. C 77-100

KAY ELOISE ROBINSON,
Plaintiff,

vs.

VOLKSWAGENWERK AKTIENGESELLSCHAFT,
VOLKSWAGEN OF AMERICA, INC.,
WORLD-WIDE VOLKSWAGEN CORPORATION,
and SEAWAY VOLKSWAGEN, INC.,
Defendants.

Attorney's Lien Claimed

Filed May 23, 1978

AMENDED PETITION

COMES now the plaintiff, KAY ELOISE ROBINSON, and for cause of action against the defendants, alleges and states as follows: Plaintiff adopts the allegations of her petition and all prior Amendments to Petition.

I.

Plaintiff alleges that at all material times mentioned herein, she was a resident of the State of New York.

II.

The defendant, Volkswagenwerk Aktiengesellschaft, hereinafter known as Volkswagen of Germany (VWAG), is a foreign corporation organized and existing under the laws of Germany. They manufacture Audi automobiles. They are doing business within the State of Oklahoma, although they have not appointed a service agent upon whom service of process can be had.

III.

The defendant, Volkswagen of America, Inc., hereinafter known as Volkswagen of America (VWA), is a foreign corporation organized under the laws of the State of New Jersey, and they are the exclusive importers of Audi automobiles for the entire United States of America. They are a wholly owned subsidiary of (VWAG).

IV.

The defendant, World-Wide Volkswagen Corporation, is a foreign corporation existing under the laws of the State of New York, and they are exclusive distributors for Audi automobiles for the States of Connecticut, New York and New Jersey.

V.

The defendant, Seaway Volkswagen, Inc., is a foreign corporation existing under the laws of the State of New York, and they are retail automobile dealers for Audi automobiles in Messena, New York.

VI.

Plaintiff, Kay Eloise Robinson, alleges that at all material times mentioned herein, she and the said Harry Robinson were husband and wife, and they are the natural parents of George Samuel Robinson and Eva Mae Robinson.

VII.

(a) Plaintiff alleges that on September 21, 1977, at about 9:15 P.M., she was driving a 1976 Audi automobile, belonging to plaintiff and to her husband, Harry Robinson, westward on the Turner Turnpike within Creek County, Oklahoma, at a point approximately one mile east of the Sapulpa, Oklahoma exit. The plaintiff's minor children, George Samuel Robinson and Eva Mae Robinson, were riding as passengers in the 1976 Audi automobile, then being driven by this plaintiff.

(b) Plaintiff alleges that at the same time and place, another motorist named Lloyd Albert Hull was driving his 1971 Ford automobile in a westerly direction behind the said 1976 Audi automobile, which was being driven by plaintiff, and that the said Lloyd Albert Hull did suddenly thereupon drive his vehicle into and upon the rear of the 1976 Audi automobile being driven by plaintiff, so as to cause the gas tank on the Audi automobile to rupture and the said Audi automobile to erupt in flames; thereby inflicting severe, crippling, painful, permanent and disabling injuries upon this plaintiff and her minor children.

VIII.

Plaintiff alleges that prior to September 21, 1977, the date of the aforementioned accident, the defendant (VWAG) designed, made, manufactured, sold, and placed in the stream of interstate commerce a 1976 Audi 100 LS automobile, Serial No. 8161018849. The defendant (VWAG) sold said Audi automobile to defendant (VWA), who imported it into the United States of America. The defendant (VWA) in turn sold said Audi automobile to defendant, World-Wide Volkswagen Corporation, who in turn sold said Audi Automobile to Seaway Volkswagen, Inc. Seaway Volkswagen, Inc. later sold said Audi automobile to plaintiff, Kay Robinson, and Harry Robinson on December 15, 1976.

IX.

Plaintiff alleges that all the defendants, at all times material herein, occupied the position and status of the manufacturer of the said Audi automobile involved herein. That as manufacturers, sellers, and distributors of the said Audi automobiles, they advertised the Audi automobile in national magazines which were circulated in Oklahoma. They advertised Audi automobiles on national television, which was broadcast and shown throughout the State of Oklahoma. They manufactured, sold, and distributed the

defective and unreasonably dangerous Audi automobile to plaintiff which directly and proximately resulted in injury and damages to this plaintiff in the State of Oklahoma. They could reasonably anticipate that the said Audi automobile would be used upon the highways of the State of Oklahoma. None of the defendants maintain a service agent within the State of Oklahoma, upon whom service of process can be served.

X.

(a) Plaintiff alleges that the aforementioned Audi automobile, as manufactured and at the time the aforementioned Audi automobile left the possession of each of the defendants, was defective, unsafe and unfit for its intended use as a passenger automobile, and it was unreasonably dangerous in that it was so designed and constructed so that its gas tank was subject to rupture and explosion upon a mild impact from the rear by another vehicle.

(b) Plaintiff alleges that the Audi automobile was further defective in that it was so designed and constructed that there was no fire wall between the passenger compartment and the fuel supply or gas tank location so that upon a slight impact from the rear the gas tank was subject to rupture and explosion; whereby, a gasoline fire could easily spread into the passenger compartment with forseeable and resulting harm to the passengers.

(c) Plaintiff further alleges that the Audi automobile was further defective in that the doors would jam shut upon slight impact from the rear.

(d) Plaintiff further alleges that the Audi automobile was further defective in that it contained no safety features in the electrical system so as to prevent ignition upon impact.

(e) Plaintiff further alleges that the Audi automobile was further defective in that it contained no self-sealing device on the fuel tank.

(f) Plaintiff further alleges that the Audi automobile was further defective in that the cap on the fuel tank, as well as the spout on the fuel tank, were subject to rupture and separation upon slight impact from the rear.

XI.

Plaintiff alleges that the defective, unsafe, unfit, and unreasonably dangerous condition of the aforementioned Audi automobile was a substantial producing factor in causing plaintiff's injuries and damages and the manufacture, sale and distribution of the said Audi automobile, in its defective and unreasonably dangerous condition, was a direct, proximate and producing cause of plaintiff's injuries and damages.

XII.

Plaintiff alleges that as a direct and proximate result of the defective, unsafe, unfit, and unreasonably dangerous condition of the aforementioned Audi automobile, and the manufacture, sale and distribution thereof, she suffered the following injuries, to-wit:

1. Third degree burns over her upper body and torso.
2. Injury to her eyes.
3. Severe scarring and mutilation of her entire body.
4. Severe physical and emotional shock.
5. Loss of portions of both hands.
6. Other injuries not yet determined, but which will be pleaded later by amendment.

XIII.

Plaintiff alleges that the defendants well knew that the placement of the fuel tank in the 1976 Audi automobile was in a position where it was particularly susceptible to collision, resulting fire and to mutilating injuries to passengers. Likewise, they were aware of the dangers from the defective design and placement of the fuel spout and fuel cap and lack of fire wall in said Audi automobile.

The defendants were well aware of the dangers to users of said Audi automobile and were fully aware of safety features which were available and which could easily have been included in the 1976 Audi automobile and which would have prevented plaintiff's injuries, but the defendants willfully, wantonly, deliberately, and knowingly chose to ignore these safety features, in favor of a cost saving, and chose to make, manufacture, sell and distribute said Audi automobile in its defective and unreasonably dangerous condition while well knowing that harm would result to users of said Audi automobile.

The defendants deliberately sacrificed safety for a cost saving while ignoring the known dangers to passengers, such as plaintiff, from the usual placement of the fuel tank in the rear of the 1976 Audi automobile. Defendants acted with a total utter and reckless disregard for the rights of prospective passengers and users, including this plaintiff, and displayed a willful, wanton, and malicious manner in total disregard for the rights of this plaintiff; because of this, plaintiff should recover punitive damages in the amount of Two Million Dollars ($2,000,000.00), for the purpose of deterring defendants and others from like or similar conduct in the future.

XIV.

Plaintiff alleges that following her aforementioned injuries, she has suffered and will continue to suffer severe and excrutiating pain, both physical and mental. Her injuries are serious and permanent in nature, and she has suffered permanent physical impairment. She has been permanently scarred, mutilated and disfigured. Her capacity to earn a living has been seriously and permanently impaired. She has suffered a loss of future earnings of Two Hundred Thousand Dollars ($200,000.00).

XV.

Plaintiff alleges that on the date of the aforementioned

accident, she was a healthy, able-bodied woman 35 years of age, and had a life expectancy of 42.5 years, according to the Life Tables of the United States Life Tables of the Department of Health, Education and Welfare.

XVI.

Plaintiff alleges that by reason of all the foregoing, she has suffered a loss in actual damages of Two Million Seven Hundred Thousand Dollars ($2,700,000.00), and she is entitled to exemplary damages of Two Million Dollars ($2,000,000.00), for all of which she claims damages against the defendants.

WHEREFORE, plaintiff prays judgment against the defendants, and each of them, for the sum of Two Million Seven Hundred Thousand Dollars ($2,700,000.00), actual damages and judgment for exemplary damages in the sum of Two Million Dollars ($2,000,000.00), or a total judgment of Four Million Seven Hundred Thousand Dollars ($4,700,000.00), together with her costs and for all other legal and equitable relief to which she may be entitled.

JURY TRIAL DEMANDED

GREER AND GREER
By Jefferson G. Greer
Attorneys for Plaintiff
206 Beacon Building
Tulsa, Oklahoma 74103
(918) 584-3591

Mr. Charles A. Whitebook
Attorney at Law
1700 Fourth NBT Building
Tulsa, Oklahoma 74119
(918) 583-2626

Permission granted this ____ day of May, 1978, to file this Amended Petition.

/S/ Charles S. Woodson
Judge of the District Court

[Certificate of Mailing omitted]

IN THE DISTRICT COURT
IN AND FOR CREEK COUNTY
BRISTOW DIVISION,
STATE OF OKLAHOMA

No. C-77-100

KAY ELOISE ROBINSON,
Plaintiff,

vs.

VOLKSWAGEN OF AMERICA, INC.,
WORLDWIDE VOLKSWAGEN CORPORATION,
and SEAWAY VOLKSWAGEN, INC.,
Defendants.

Filed November 17, 1977

SPECIAL APPEARANCE,
DENIAL OF JURISDICTION AND VENUE

COMES NOW the defendant Worldwide Volkswagen Corporation, and hereby specially appears for the purpose of objection to jurisdiction and venue only in this cause upon the following grounds and reasons:

1. Defendant Worldwide Volkswagen Corporation is a foreign corporation, it is not authorized to do business in Oklahoma nor has it ever done business in Oklahoma, and it has never had any type of contact, or minimal contact with the jurisdiction of the State of Oklahoma.
2. The statutes of the State of Oklahoma and of the United States Constitution provide that in personam jurisdiction cannot be effected within the boundaries of the State of Oklahoma upon this defendant.
3. This Honorable Court does not have jurisdiction over the parties, nor venue of the subject matter.

4. Service of process has not been issued, executed, nor returned according to the statutes of the State of Oklahoma.

Defendant Worldwide Volkswagen Corporation further requests and respectfully asks this Honorable Court to set the issues of jurisdiction and venue for a hearing pursuant to Oklahoma Statutes Title 12, Section 189, so that this defendant can submit evidence to support this defendant's Special Appearance before the Court.

WHEREFORE, defendant Worldwide Volkswagen Corporation prays for an immediate hearing concerning the jurisdiction and venue of this Court, and further prays for a dismissal of the action commenced herein upon the grounds and reasons heretofore stated concerning the Court's total lack of jurisdiction of the parties, subject matter and venue hereto.

Authorities:
United States Constitution, 14th Amendment
Due Process Clause
Oklahoma Statutes, Title 12, Section 137
Oklahoma Statutes, Title 12, Section 163
Oklahoma Statutes, Title 12, Section 170.1
Oklahoma Statutes, Title 12, Section 170.8
Oklahoma Statutes, Title 12, Section 187
Oklahoma Statutes, Title 12, Section 189
Oklahoma Statutes, Title 12, Section 1701.02
Oklahoma Statutes, Title 12, Section 1701.03
Oklahoma Statutes, Title 12, Section 1702.01
Oklahoma Statutes, Title 18, Section 471

/S/ Mike Barkley
Suite 702 Utica Tower
1924 South Utica
Tulsa, Oklahoma 74104
Telephone: (918) 749-8846

Attorney for Defendant
Worldwide Volkswagen Corporation

[Notarization and Certificate Of Mailing omitted]

IN THE DISTRICT COURT
IN AND FOR CREEK COUNTY
BRISTOW DIVISION,
STATE OF OKLAHOMA

No. C-77-100

KAY ELOISE ROBINSON,
Plaintiff,

vs.

VOLKSWAGEN OF AMERICA, INC.,
WORLD-WIDE VOLKSWAGEN CORPORATION,
and SEAWAY VOLKSWAGEN, INC.,
Defendants.

Filed November 17, 1977

SPECIAL APPEARANCE AND DENIAL OF JURISDICTION

The defendant, Seaway Volkswagen, Inc., appearing specially for the purpose of this motion only, and no other, respectfully moves the court to vacate the summons issued and served in this cause upon the following grounds:

1. The Court has no venue over the subject matter herein.
2. The Court has no jurisdiction over the defendant.
3. The purported summons has not been issued, served or returned as by law provided.

Authorities:

Title 12 O.S. Section 187
Title 12 O.S. Section 1701.03
International Shoe Co. v. Washington, 326 U.S. 310 (1945)

Fields v. Volkswagen of America, Inc., 555 P.2d 48 (1976)
Winston Industries, Inc., v. Seventh Judicial Dist, 48 O.B.J. 373 (Feb., 1977)

/S/ Dan A. Rogers
117 East Fifth Street
Tulsa, Oklahoma 74103
Telephone: 583-5111

Attorney for Defendant,
Seaway Volkswagen, Inc.

[Certificate of Mailing omitted]

IN THE DISTRICT COURT
IN AND FOR CREEK COUNTY
BRISTOW DIVISION,
STATE OF OKLAHOMA

No. C-77-100

KAY ELOISE ROBINSON,
Plaintiff,

vs.

VOLKSWAGEN OF AMERICA, INC.,
WORLDWIDE VOLKSWAGEN CORPORATION,
and SEAWAY VOLKSWAGEN, INC.,
Defendants.

ORDER OVERRULING MOTIONS TO QUASH AND PLEA TO THE JURISDICTION

On this 21st day of December, 1977, the above entitled cause comes on for hearing on the Special Appearances, Motions to Quash and Plea to the Jurisdiction of the Court as filed by each and every one of the defendants. All parties were present by and through their attorneys of record.

After having reviewed the Petition, Summons and Motions filed by each and every one of the defendants, the Court finds that each and every Special Appearance and Motion to Quash and Plea to the Jurisdiction of the Court as filed by each of the defendants is hereby overruled with exceptions granted to each defendant.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED by the Court that the Special Appearances and Motions to Quash and Plea to the Jurisdiction of the Court as filed by each and every defendant herein is

hereby overruled, with exceptions granted to each defendant, and each defendant is hereby given fifteen (15) days to further plead or answer in the above entitled cause.

/S/ Charles S. Woodson
District Judge

Approved as to form:

/S/ Bert M. Jones
Attorney for Volkswagen of America

/S/ Charles Michael Barkley
Attorney for Worldwide Volkswagen

/S/ Dan A. Rogers
Attorney for Seaway Volkswagen, Inc.

IN THE DISTRICT COURT
IN AND FOR CREEK COUNTY
BRISTOW DIVISION,
STATE OF OKLAHOMA

No. C-77-100

KAY ELOISE ROBINSON,
Plaintiff,

vs.

VOLKSWAGEN OF AMERICA, INC.,
WORLDWIDE VOLKSWAGEN CORPORATION,
and SEAWAY VOLKSWAGEN, INC.
Defendants.

Filed January 5, 1978

MOTION TO RECONSIDER

Comes now the defendant, Worldwide Volkswagen Corporation, a foreign corporation, and moves this Court to reconsider its ruling of December 21, 1977, overruling defendant Worldwide Volkswagen Corporation's Special Appearance and Denial of Jurisdiction based on the statutes cited in said Motion and Affidavit attached hereto and marked "Exhibit A".

/S/ Mike Barkley
1924 South Utica, Suite 702
Tulsa, Oklahoma 74104
Telephone: (918) 749-8846

Attorney for Defendant,
Worldwide Volkswagen Corporation

[Certificate of Mailing omitted]

EXHIBIT A

STATE OF NEW YORK
COUNTY OF NEW YORK } SS.:

MERVIN ROSENMAN, being duly sworn, deposes and says:

I am Assistant Secretary and General Counsel of defendant World-Wide Volkswagen Corporation (hereinafter "World-Wide") and am fully familiar with the operations and the affairs of that corporation.

World-Wide is a corporation organized and existing under the laws of the State of New York and also is authorized to do business in the states of New Jersey and Connecticut. It has been appointed by Volkswagen of America, Inc. to be the distributor of Volkswagen vehicles, parts and accessories for the above-mentioned states of New York, New Jersey and Connecticut.

World-Wide's only office is in Orangeburg, New York. We are not authorized to do business in the State of Oklahoma; we have never done business in that state and we have no intention of doing business there in the future.

World-Wide does not advertise in any national magazine, or on network television or radio, nor does it participate in any advertising fund or pool placing advertisements in the State of Oklahoma.

World-Wide has no relationship with Volkswagen of America, Inc. other than being an authorized distributor as aforesaid. The two corporations have no common officers, directors or stockholders.

World-Wide does not do any designing or manufacturing of automotive vehicles nor any "make-ready" work. It had nothing to do with the vehicle in question except that it sold same to Seaway Volkswagen, Inc. on January 8, 1976 (we had no relationship with that corporation except that at that time it was an authorized Volkswagen dealership).

/S/ Mervin Rosenman

[Notarization omitted]

IN THE DISTRICT COURT
IN AND FOR CREEK COUNTY
BRISTOW DIVISION,
STATE OF OKLAHOMA

No. C-77-100

KAY ELOISE ROBINSON,
Plaintiff,

vs.

VOLKSWAGEN OF AMERICA, INC.,
WORLD-WIDE VOLKSWAGEN CORPORATION,
and SEAWAY VOLKSWAGEN, INC.,
Defendants.

MOTION TO RECONSIDER

Comes now the defendant, Seaway Volkswagen, Inc., a foreign corporation, and moves this Court to reconsider its ruling of December 21, 1977, overruling defendant Seaway Volkswagen, Inc.'s Special Appearance and Denial of Jurisdiction based on the statutes cited therein and the Affidavit attached hereto and made a part hereof.

/S/ Dan A. Rogers
117 East Fifth Street
Tulsa, Oklahoma 74103
Phone: 583-5111

Attorney for Defendant,
Seaway Volkswagen, Inc.

[Certificate of Mailing omitted]

IN THE DISTRICT COURT
IN AND FOR CREEK COUNTY
BRISTOW DIVISION,
STATE OF OKLAHOMA

No. C-77-100

KAY ELOISE ROBINSON,
Plaintiff,

vs.

VOLKSWAGEN OF AMERICA, INC.,
WORLD-WIDE VOLKSWAGEN CORPORATION,
and SEAWAY VOLKSWAGEN, INC.
Defendants.

AFFIDAVIT

I.

Dan A. Rogers, being duly sworn, deposes and says that he is attorney of record for the defendant corporation, Seaway Volkswagen, Inc.

II.

He has personal knowledge of the facts contained herein.

III.

Defendant, Seaway Volkswagen, Inc., hereinafter "Seaway," is a New York corporation with its principal place of business in Massena, New York.

IV.

Defendant Seaway Volkswagen, Inc. has never designated an agent in Oklahoma for service of process upon itself.

V.

Seaway has not entered into any contracts within the State of Oklahoma.

VI.

Seaway has no office, bank account, property or other assets in the State of Oklahoma.

VII.

Seaway is not listed in any Oklahoma telephone directory.

VIII.

Seaway has not committed a tortious act within the State of Oklahoma.

IX.

Seaway does not own, use or possess any real estate situated within the State of Oklahoma.

X.

Seaway does not own or lease any equipment or space situated in the State of Oklahoma.

XI.

Seaway has not contracted to sell, rent or lease any business equipment within the State of Oklahoma.

XII.

The subject action is not related in any way to the presence of Seaway in the State of Oklahoma.

XIII.

Prior to being named a defendant in the subject lawsuit, Seaway was never involved in any litigation in the State of Oklahoma nor did Seaway ever retain a lawyer within the State of Oklahoma.

XIV.

Seaway has never advertised through books, magazines, periodicals, radio, television, or any other part of the media, within the State of Oklahoma.

XV.

Seaway, never had the intention nor foresaw that any of its sales of automobiles would result in their presence in the State of Oklahoma.

/S/ Dan A. Rogers

[Notarization omitted]

IN THE DISTRICT COURT
IN AND FOR CREEK COUNTY
BRISTOW DIVISION,
STATE OF OKLAHOMA

No. C-77-100

KAY LOUISE ROBINSON,
Plaintiff,

vs.

VOLKSWAGEN OF AMERICA, INC.,
WORLD-WIDE VOLKSWAGEN CORPORATION,
and SEAWAY VOLKSWAGEN, INC.,
Defendants.

ORDER

On this 14th day of June, 1978, the above-entitled cause comes on for hearing on the Defendant World-Wide Volkswagen Corporation's and Defendant Seaway Volkswagen, Inc.'s Motions to Reconsider the Court's jurisdiction and venue. Plaintiff appeared by and through her counsel of record, Mr. Jefferson C. Greer. Defendant World-Wide Volkswagen Corporation appeared by and through its attorney, Mr. Mike Barkley. Defendant Seaway Volkswagen, Inc. appeared by and through its attorney, Mr. Dan A. Rogers, by Mr. Timothy McCormick.

After having examined the Petition and Summons on file, as well as the affidavits filed by each of the defendants herein, the Court finds that the Motions to Reconsider the Court's previous ruling concerning jurisdiction and venue of Defendant World-Wide Volkswagen Corporation and Defendant Seaway Volkswagen, Inc. should be overruled and the defendants given fifteen (15) days to further plead or answer.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED by the Court that the Motions to Reconsider this Court's jurisdiction and venue over the parties, Defendant World-Wide Volkswagen Corporation and Defendant Seaway Volkswagen, Inc., are hereby overruled, with exceptions granted, and the defendants are given fifteen (15) days to further plead or answer herein.

/S/ Charles S. Woodson, District Judge

Approved as to form:

/S/ Jefferson G. Greer
Attorney for Plaintiff

/S/ Mike Barkley
Attorney for Defendant World-Wide
Volkswagen Corporation

/S/ Dan A. Rogers
Attorney for Defendant,
Seaway Volkswagen, Inc.

IN THE DISTRICT COURT
IN AND FOR CREEK COUNTY
BRISTOW DIVISION,
STATE OF OKLAHOMA

No. C 77-100

KAY ELOISE ROBINSON,
Plaintiff,

vs.

AUDI NSU AUTO UNION AKTIENGESELLSCHAFT,
VOLKSWAGEN OF AMERICA, INC.,
WORLD-WIDE VOLKSWAGEN CORPORATION,
and SEAWAY VOLKSWAGEN, INC.,
Defendants.

Filed June 14, 1978

ATTORNEYS LIEN CLAIMED

SECOND AMENDED PETITION

COMES now the plaintiff, KAY ELOISE ROBINSON, and for cause of action against the defendants, alleges and states as follows: Plaintiff adopts the allegations of her Petition and all prior Amendments to Petition.

I.

Plaintiff alleges that at all material times mentioned herein, she was a resident of the State of New York.

II.

The defendant, Audi NSU Auto Union Aktiengesellschaft, hereinafter known as AUDI, is a foreign corporation organized and existing under the laws of Germany. They manufacture Audi automobiles. They are doing business within the State of Oklahoma, although they have not appointed a service agent upon whom service of process can be had.

III.

The defendant, Volkswagen of America, Inc., hereinafter known as Volkswagen of America (VWA), is a foreign corporation organized under the laws of the State of New Jersey, and they are the exclusive importers of Audi automobiles for the entire United States of America.

IV.

The defendant, World-Wide Volkswagen Corporation, is a foreign corporation existing under the laws of the State of New York, and they are exclusive distributors for Audi automobiles for the states of Connecticut, New York and New Jersey.

V.

The defendant, Seaway Volkswagen, Inc., is a foreign corporation existing under the laws of the State of New York, and they are retail automobile dealers for Audi automobiles in Messena, New York.

VI.

Plaintiff, Kay Eloise Robinson, alleges that at all material times mentioned herein, she and the said Harry Robinson were husband and wife, and they are the natural parents of George Samuel Robinson and Eva Mae Robinson.

VII.

(a) Plaintiff alleges that on September 21, 1977, at about 9:15, P.M., she was driving a 1976 Audi automobile, belonging to plaintiff and to her husband, Harry Robinson, westward on the Turner Turnpike within Creek County, Oklahoma, at a point approximately one mile east of the Sapulpa, Oklahoma exit. The plaintiff's minor children, George Samuel Robinson and Eva Mae Robinson, were riding as passengers in the 1976 Audi automobile, then being driven by this plaintiff.

(b) Plaintiff alleges that at the same time and place, another motorist named Lloyd Albert Hull was driving his

1971 Ford automobile in a westerly direction behind the said 1976 Audi automobile, which was being driven by plaintiff, and that the said Lloyd Albert Hull did suddenly thereupon drive his vehicle into and upon the rear of the 1976 Audi automobile being driven by plaintiff, so as to cause the gas tank on the Audi automobile to rupture and the said Audi automobile to erupt in flames; thereby inflicting severe, crippling, painful, permanent and disabling injuries upon this plaintiff and her minor children.

VIII.

Plaintiff alleges that prior to September 21, 1977, the date of the aforementioned accident, the defendant (AUDI) designed, made, manufactured, sold and placed in the stream of interstate commerce a 1976 Audi 100 LS automobile, Serial No. 8161018849. The defendant (AUDI) sold said Audi automobile to defendant (VWA), who imported it into the United States of America. The defendant (VWA) in turn sold said Audi automobile to defendant, World-Wide Volkswagen Corporation, who in turn sold said Audi automobile to Seaway Volkswagen, Inc. Seaway Volkswagen, Inc., later sold said Audi automobile to plaintiff, Kay Eloise Robinson and Harry Robinson on December 15, 1976.

IX.

Plaintiff alleges that all the defendants, at all times material herein, occupied the position and status of the manufacturer of the said Audi automobile involved herein. That as manufacturers, sellers, and distributors of the said Audi automobiles, they advertised the Audi automobile in national magazines which were circulated in Oklahoma. They advertised Audi automobiles on national television, which was broadcast and shown throughout the State of Oklahoma. They manufactured, sold, and distributed the defective and unreasonably dangerous Audi automobile to plaintiff which directly and proximately resulted in injury

and damages to this plaintiff in the State of Oklahoma. They could reasonably anticipate that the said Audi automobile would be used upon the highways of the State of Oklahoma. None of the defendants maintain a service agent within the State of Oklahoma, upon whom service of process can be served.

X.

(a) Plaintiff alleges that the aforementioned Audi automobile, as manufactured and at the time the aforementioned Audi automobile left the possession of each of the defendants, was defective, unsafe and unfit for its intended use as a passenger automobile, and it was unreasonably dangerous in that it was so designed and constructed so that its gas tank was subject to rupture and explosion upon a mild impact from the rear by another vehicle.

(b) Plaintiff alleges that the Audi automobile was further defective in that it was so designed and constructed that there was no fire wall between the passenger compartment and the fuel supply or gas tank location so that upon a slight impact from the rear the gas tank was subject to rupture and explosion; whereby, a gasoline fire could easily spread into the passenger compartment with forseeable and resulting harm to the passengers.

(c) Plaintiff further alleges that the Audi automobile was further defective in that the doors would jam shut upon slight impact from the rear.

(d) Plaintiff further alleges that the Audi automobile was further defective in that it contained no safety features in the electrical system so as to prevent ignition upon impact.

(e) Plaintiff further alleges that the Audi automobile was further defective in that it contained no self-sealing device on the fuel tank.

(f) Plaintiff further alleges that the Audi automobile was

further defective in that the cap on the fuel tank, as well as the spout on the fuel tank, were subject to rupture and separation upon slight impact from the rear.

XI.

Plaintiff alleges that the defective, unsafe, unfit, and unreasonably dangerous condition of the aforementioned Audi automobile was a substantial producing factor in causing plaintiff's injuries and damages and the manufacture, sale and distribution of the said Audi automobile, in its defective and unreasonably dangerous condition, was a direct, proximate and producing cause of plaintiff's injuries and damages.

XII.

Plaintiff alleges that as a direct and proximate result of the defective, unsafe, unfit, and unreasonably dangerous condition of the aforementioned Audi automobile, and the manufacture, sale and distribution thereof, she suffered the following injuries, to-wit:

1. Third degree burns over her upper body and torso.
2. Injury to her eyes.
3. Severe scarring and mutilation of her entire body.
4. Severe physical and emotional shock.
5. Loss of portions of both hands.
6. Other injuries not yet determined, but which will be pleaded later by amendment.

XIII.

Plaintiff alleges that the defendant well knew that the placement of the fuel tank in the 1976 Audi automobile was in a position where it was particularly susceptible to collision, resulting fire and to mutilating injuries to passengers. Likewise, they were aware of the dangers from the defective design and placement of the fuel spout and fuel cap and lack of fire wall in said Audi automobile.

The defendants were well aware of the dangers to users of said Audi automobile and were fully aware of safety features which were available and which could easily have been included in the 1976 Audi automobile and which would have prevented plaintiff's injuries, but the defendants willfully, wantonly, deliberately, and knowingly chose to ignore these safety features, in favor of a cost savings, and chose to make, manufacture, sell and distribute the Audi automobile in its defective and unreasonably dangerous condition while well knowing that harm would result to users of said Audi automobile.

The defendants deliberately sacrificed safety for a cost saving while ignoring the known dangers to passengers, such as plaintiff, from the usual placement of the fuel tank in the rear of the 1976 Audi automobile. Defendants acted with a total utter and reckless disregard for the rights of prospective passengers and users, including this plaintiff, and displayed a willful, wanton, and malicious manner in total disregard for the rights of this plaintiff; because of this, plaintiff should recover punitive damages in the amount of Two Million Dollars ($2,000,000.00), for the purpose of deterring the defendants and others from like or similar conduct in the future.

XIV.

Plaintiff alleges that following her aforementioned injuries, she has suffered and will continue to suffer severe and excrutiating pain, both physical and mental. Her injuries are serious and permanent in nature, and she has suffered permanent physical impairment. She has been permanently scarred, mutilated and disfigured. Her capacity to earn a living has been seriously and permanently impaired. She has suffered a loss of future earnings of Two Hundred Thousand Dollars ($200,000.00).

XV.

Plaintiff alleges that on the date of the aforementioned accident, she was a healthy, able-bodied woman 35 years

of age, and had a life expectancy of 42.5 years, according to the Life Tables of the United States Life Tables of the Department of Health, Education and Welfare.

XVI.

Plaintiff alleges that by reason of all the foregoing, she has suffered a loss in actual damages of Two Million Seven Hundred Thousand Dollars ($2,700,000.00), and she is entitled to exemplary damages of Two Million Dollars ($2,000,000.00), for all of which she clams damages against the defendants.

WHEREFORE, plaintiff prays judgment against the defendants, and each of them, for the sum of Two Million Seven Hundred Thousand Dollars ($2,700,000.00), actual damages and judgment for exemplary damages in the sum of Two Million Dollars ($2,000,000.00), or a total judgment of Four Million Seven Hundred Thousand Dollars ($4,700,000.00), together with her costs and for all other legal and equitable relief to which she may be entitled.

JURY TRIAL DEMANDED

GREER AND GREER
/S/ Jefferson G. Greer

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PERMISSION GRANTED THIS 13th DAY OF JUNE, 1978, TO FILE THIS SECOND AMENDED PETITION.

/S/ Charles S. Woodson

Judge of the District Court

[Certificate of Mailing omitted]

IN THE SUPREME COURT
OF THE STATE OF OKLAHOMA

No. 52478

WORLD-WIDE VOLKSWAGEN CORPORATION
and SEAWAY VOLKSWAGEN, INC.,
Petitioners

v.

THE HONORABLE CHARLES S. WOODSON,
District Judge of Creek County, State of Oklahoma,
KAY ELOISE ROBINSON, EVA MAY ROBINSON,
a minor, by an through her father and next friend,
Harry Robinson, GEORGE SAMUEL ROBINSON,
a minor, by and through his father and next friend,
Harry Robinson, and HARRY ROBINSON, individually,
Respondents.

Filed June 29, 1978

APPLICATION TO ASSUME ORIGINAL JURISDICTION AND PETITION FOR WRIT OF PROHIBITION

COME NOW the petitioners and respectfully pray and petition this Court tc assume original jurisdiction in an original proceeding and petitions this Court for a Writ of Prohibition for the following reasons:

1. That on the 18th day of October, 1977, Respondent Kay Eloise Robinson filed her action in the District Court of Creek County, Bristow Division, against these petitioners under the case number C-77-100. Respondent Eva May Robinson, a minor, by and through her father and next friend, Harry Robinson, filed her petition in the District Court of Creek County, Bristow Division, under case number C-77-101. That Respondent George Samuel Robinson, a minor, by and through his father and next friend, Harry Robinson, filed his action in the District Court of

Creek County, Bristow Division, on the 18th of October, 1977, against these petitioners, under case number C-77-102. That the Respondent Harry Robinson filed his action in the District Court of Creek County, Bristow Division, on the 18th day of October, 1977, under case number C-77-103. Copies of the petitions of each of the respondents named herein are attached hereto, incorporated herein, and marked Exhibits A through D.

2. Petitioners state that on the 17th day of November, 1977, Petitioner World-Wide Volkswagen Corporation, duly filed its special appearance, denial of jurisdiction and venue herein, attacking the Court's jurisdiction and venue, a true and correct copy of which is attached hereto, marked Exhibit E. That on the ____ day of November, 1977, Petitioner Seaway Volkswagen, Inc., duly filed its special appearance, motion to quash and denial of jurisdiction herein, a true and correct copy of which is attached hereto and marked Exhibit F.

3. That on the 21st day of December, 1977, the Court set the matters for hearing on the petitioners motions attacking the state Court's jurisdiction and venue. After having examined the pleadings and summons on file, the Court overruled the petitioners motions, as reflected by the order attached hereto, marked Exhibit G, and incorporated herein.

4. That on the 5th day of January, 1978, the petitioners herein duly filed their motions to reconsider the Court's previous overruling of petitioners' special appearance and denial of jurisdiction, and incorporated affidavits hereto, concerning the Court's jurisdiction and venue over petitioners. True and correct copies of the motions to reconsider are attached, marked Exhibits H and I, and incorporated herein.

5. Petitioners further attach hereto copies of the respondents' amended petitions, marked Exhibits J through M, respectively.

6. Petitioners hereby respectfully move the Court to consolidate all four cases of each respondent, for the purposes of hearing petitioners' Application to Assume Original Jurisdiction concerning the Court's proper jurisdiction and venue, upon all matters herein, and hereby incorporates all four cases for the purpose of the filing of one Application to Assume Original Jurisdiction and Petition for Writ of Prohibition.

7. That on the 14th day of June, 1978, the Court conducted a hearing on the petitioners' motions to reconsider the Court's jurisdiction and venue. After having examined the petitions, summons, amended petitions, as well as the affidavits filed herein by each of the petitioners, the respondent, Judges Charles S. Woodson, overruled the petitioners' motions to reconsider the Court's jurisdiction and venue. Copies of the Respondent Judge's orders are attached hereto, marked Exhibits N through Q, respectively, and incorporated herein.

8. Petitioners state that under the allegations contained in the respondents' petitions and amended petitions, it is stated that Petitioner World-Wide Volkswagen Corporation is a foreign corporation, existing under the laws of the State of New York, and are exclusive distributors for Audi automobiles for the States of Connecticut, New York and New Jersey. It is stated that Petitioner Seaway Volkswagen, Inc. is a foreign corporation, existing under the laws of the State of New York, and are retail automobile dealers for Audi automobiles in Massena, New York. Petitioners state that these allegations are true and correct.

9. Petitioners further state that an Audi automobile imported into the United States of America by the defendant in the original action, Volkswagen of America, Inc.,

was thereafter sold to Petitioner World-Wide Volkswagen Corporation, who in turn distributed such automobile to the Petitioner Seaway Volkswagen, Inc., who thereafter sold the Audi automobile, which is the subject of this litigation, to the respondent, Harry Robinson. Petitioners state that at the time of the sale of the automobile to the respondent, Harry Robinson, Harry Robinson and all respondents which are the subjects of the original actions, were residents and citizens of the State of New York.

10. Respondents' allegations against the petitioners are incorporated in respondents' petitions and amended petitions, which are incorporated herein. They basically state that the Audi automobile in question was defective in the design and manufacture. There are no allegations that the petitioners herein manufactured or designed the Audi automobile in question. The allegations against these petitioners are made under the Oklahoma rule of manufacturer's products liability, under the theory that the retailer and distributor stand in the same shoes as the manufacturer concerning liability.

Petitioners state that that theory is well taken. However, petitioners respectfully submit that they should not be parties to the original actions in the District Court in and for Creek County, Bristow Division, because petitioners do not have any minimal contacts whatsoever with the jurisdiction of the District Courts of the State of Oklahoma.

11. Petitioners state that the Respondent Judge is attempting to exercise jurisdiction over these petitioners, even though they do not satisfy the criterion of having any minimal contacts with the State of Oklahoma, and for the respondent Judge to continue to issue orders and exercise jurisdiction over these petitioners is a substantial violation of the due process clause of the Fourteenth Amendment of

the United States Constitution, and contrary to the laws of the State of Oklahoma.

12. Petitioners state that they will be substantially harmed should this Court fail to assume original jurisdiction, and issue a Writ of Prohibition, prohibiting the Respondent Judge from exercising any further jurisdiction over these petitioners.

13. Petitioners state that the respondents have wholly failed to show any type of contract whatsoever, by these petitioners, with the jurisdiction of the boundaries of the State of Oklahoma, and the respondents total failure to do so warrants that this Honorable Court should assume original jurisdiction and issue its Writ of Prohibition, prohibiting the Respondent Judge from exercising any further jurisdiction over these petitioners.

14. Petitioners state that they are asking this Honorable Court to grant their Application and Petition for Writ of Prohibition because this Court has the authority to compel the Respondent Judge to act according to the laws of the United States of America, as well as the laws of the State of Oklahoma. Petitioners further state that they are without further remedies at the trial court level, and if this Honorable Court does not issue a Writ of Prohibition, prohibiting the trial court from acting any further concerning authority over these petitioners, then they will suffer from undue injustice and great harm. Petitioners state that they have exhausted any and all remedies that they have at the trial court level, concerning the Respondent Judge.

WHEREFORE, petitioners pray that this Honorable Court assume original jurisdiction and, having done so, issue its Writ prohibiting the Respondent Judge from exercising any further jurisdiction over these petitioners.

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Attorneys for Petitioner
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[Notarizations and Certificate Of Mailing omitted]

IN THE SUPREME COURT
OF THE STATE OF OKLAHOMA

No. 52,478

WORLD-WIDE VOLKSAGEN CORPORATION
and SEAWAY VOLKSWAGEN, INC.,
Petitioners,

v.

THE HONORABLE CHARLES S. WOODSON,
District Judge of Creek County, State of Oklahoma,
KAY ELOISE ROBINSON, EVA MAY ROBINSON,
a minor, by and through her father and next friend,
HARRY ROBINSON, and HARRY ROBINSON,
individually,
Respondents.

ORIGINAL PROCEEDING
ON APPLICATION TO ASSUME
ORIGINAL JURISDICTION
AND PETITION FOR WRIT
OF PROHIBITION

**ORIGINAL JURISDICTION
ASSUMED AND WRIT DENIED**

(The full text of this Order and Opinion is reprinted as Appendix in the Petition for a Writ of Certiorari to the Supreme Court of the State of Oklahoma, Filed herein on January 5, 1979.)